

**312 RESPONSE  
SER. NO. 09/996,342  
ATTORNEY DOCKET NO.: WASC1821**

**March 27, 2006**

**\* \* \* R \* E \* M \* A \* R \* K \* S \* \* \***

Applicants herewith submit this 312 Response in a bona fide attempt to advance the prosecution of this case and to answer each and every ground of rejection as set forth by the Examiner. Applicants respectfully request this Amendment be entered and further request that the appeal proceed as if the Notice of Allowance was never filed. Applicant requests that all filing and due dates for the Appeal remain as before.

Apparently, the Examiner did not understand that the Applicant's intention was to continue with its appeal. On March 13<sup>th</sup>, the undersigned received a telephone call from Examiner Lau concerning this case. The Examiner stated that he found allowable subject matter if the limitations of Claims 1 and 2 were combined. Applicant considered the matter and decided that it would like to continue with the Appeal without changing any of the claims. However, Applicant would file a continuation case, which would combine the limitations of Claims 1 & 2 and sought a speedy allowance of that case from the Examiner. The undersigned verbally communicated this to Examiner Lau.

Applicant then prepared a Continuation Application and a Preliminary Amendment. Subsequently, the undersigned spoke with Examiner Lau again and the Examiner requested that the Preliminary Amendment be first sent to him. Applicant agreed and sent the Preliminary Amendment directly to Examiner Lau's private fax address. The Examiner after reading the Preliminary Amendment suggested further changes. Applicant agreed to these further changes and subsequently filed its continuation with the Preliminary Amendment attached. Applicant sent a courtesy copy of the Preliminary Amendment again to Examiner's Lau's private fax number.

Shortly thereafter the undersigned received a telephone communication from Examiner Lau who wanted further changes. The undersigned was awaiting the formal communication before responding. Upon receipt of the formal communication, the undersigned realized that the Examiner had misunderstood and immediately telephoned Examiner Lau's SPE, John Barlow. This communication follows that telephone call.

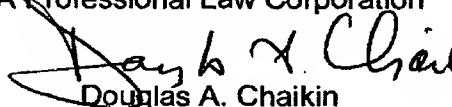
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It will be noted that in Applicant's Preliminary Amendment, p. 11, second sentence of the Remarks section that the Applicant specifically stated that it did not want the Appeal disturbed and was filing the continuation to obtain a speedy allowance on the continuation. Additionally, there is no serial number or filing date on the continuation and furthermore, it is labeled a Preliminary Amendment, not a Response after Final as would be required if this were a modification of the parent case.

Therefore it is quite clear Applicant had no intention of disturbing the appeal on the parent case and wanted only to assist the Examiner and obtain an earlier allowance of the continuation case. The appeal should immediately be put back and all applicable dates should remain as if the Notice of Allowance never happened and the Notice of Allowance should be withdrawn from this case and applied to the continuation case.

Respectfully submitted,

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